

On October 27, 2014, the petitioner filed a motion for default judgment (doc. 18). The petitioner contends that the response to his motion for summary judgment was due on or before 4:30 p.m. on October 9, 2014, and because the respondent filed the motion for extension of time on October 9th at 5:14 p.m., it was 44 minutes late, and he is entitled to default judgment.

The petitioner's motion is meritless. Pursuant to Rule 6.3 of the Electronic Case Filing Policies and Procedures for the District of South Carolina, "Timeliness of electronic filing is based on local time in the District of South Carolina (eastern time zone). Filing must be completed with a court generated NEF before midnight in the eastern time zone to be considered timely filed that day." *Available at <http://www.scd.uscourts.gov/CMECF/procedures.asp>*. Accordingly, the respondent timely filed a motion for extension of time on October 9, 2014. Moreover, default judgment is not available in a habeas action. See *Kelley v. McCall*, C.A. No. 3:09-3133-HMH-JRM, 2010 WL 1999521, at *3 (D.S.C. Apr. 26, 2010) ("Rule 55, Fed. R. Civ. P., pertaining to default judgment, is not applicable to habeas cases."), adopted by 2010 WL 1999488 (D.S.C. May 19, 2010). Based upon the foregoing, the motion (doc. 18) should be denied.

IT IS SO RECOMMENDED.

s/ Kevin F. McDonald
United States Magistrate Judge

November 12, 2014
Greenville, South Carolina